

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 145

May 3, 1995, 11:23 a.m.  
Page S-6045 Temp. Record

## PRODUCT LIABILITY/Eliminating the Punitive Damage Cap

**SUBJECT:** Product Liability Fairness Act . . . H.R. 956. Gorton motion to table the Dorgan amendment No. 619 to the Dole amendment No. 617 to the Gorton substitute amendment No. 596.

### ACTION: MOTION TO TABLE AGREED TO, 51-49

**SYNOPSIS:** As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment would apply only to Federal and State civil product liability cases. It would abolish the doctrine of joint liability for noneconomic damages, would create a consistent standard for the award of punitive damages, and would limit punitive damage awards.

The Dole amendment would bar the award of punitive damages in any Federal or State civil action the subject matter of which affected commerce unless the claimant could establish by clear and convincing evidence that the harm was the result of conduct by the defendant that was either specifically intended to cause harm or was carried out with conscious, flagrant disregard to the rights or safety of others. Punitive awards would not exceed 2 times the sum of the awards for economic and noneconomic losses. At the request of any party, the trier of fact would conduct a separate proceeding to determine if punitive damages should be awarded. If a separate proceeding were held, evidence relevant only to the claim of punitive damages, as determined by applicable State law, would be inadmissible in any proceeding to determine whether to award compensatory damages.

**The Dorgan second-degree amendment** to the Dole amendment would strike the provisions of the Dole amendment and would insert in lieu thereof the requirement that punitive damages in product liability cases would only be awarded if the claimants were able to show by clear and convincing evidence that the harm they suffered was the result of conduct that was carried out by the defendants with a conscious, flagrant indifference to the safety of others. Additionally, the amendment would require the trier of fact to hold a separate punitive damage proceeding at the request of any party to a punitive damage action.

Debate was limited by unanimous consent. Following debate, Senator Gorton moved to table the Dorgan amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

(See other side)

YEAS (51)			NAYS (49)			NOT VOTING (0)	
Republicans (46 or 85%)		Democrats (5 or 11%)	Republicans (8 or 15%)		Democrats (41 or 89%)	Republicans (0)	Democrats (0)
Abraham	Hatfield	Exon	Cohen	Akaka	Heflin		
Ashcroft	Helms	Lieberman	D'Amato	Baucus	Hollings		
Bennett	Hutchison	Moynihan	Packwood	Biden	Inouye		
Bond	Inhofe	Nunn	Roth	Bingaman	Johnston		
Brown	Jeffords	Robb	Shelby	Boxer	Kennedy		
Burns	Kassebaum		Simpson	Bradley	Kerrey		
Campbell	Kempthorne		Specter	Breaux	Kerry		
Chafee	Kyl		Thompson	Bryan	Kohl		
Coats	Lott			Bumpers	Lautenberg		
Cochran	Lugar			Byrd	Leahy		
Coverdell	Mack			Conrad	Levin		
Craig	McCain			Daschle	Mikulski		
DeWine	McConnell			Dodd	Moseley-Braun		
Dole	Murkowski			Dorgan	Murray		
Domenici	Nickles			Feingold	Pell		
Faircloth	Pressler			Feinstein	Pryor		
Frist	Santorum			Ford	Reid		
Gorton	Smith			Glenn	Rockefeller		
Gramm	Snowe			Graham	Sarbanes		
Grams	Stevens			Harkin	Simon		
Grassley	Thomas				Wellstone		
Gregg	Thurmond						
Hatch	Warner						

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

**Those favoring** the motion to table contended:

Raising the evidentiary standard needed for the award of punitive damages and allowing a separate proceeding on such damages would not be enough to stop abuses. The few excessive awards that are given now are unjustified under the present standard; we see no reason to believe that rogue courts would be more responsible with higher standards. The one certain way to prevent excessive judgments is to ban them. We therefore urge our colleagues to table the Dorgan amendment.

**Those opposing** the motion to table contended:

We find ourselves in the middle of this debate. Senators who argue that way too many frivolous lawsuits are filed, and that way too many of those cases result in enormous damage awards, are absolutely correct. On the other hand, those Senators who argue that companies that deliberately make extremely dangerous products should be severely punished are also correct. They should not be permitted to make the calculation that it is cheaper to pay the compensatory losses for those people who will be killed or severely injured than it is to fix their products. Often only the threat, or actual imposition, of large punitive damage awards is necessary to convince companies to behave with normal human decency. Thus, in an effort to stake out a middle ground on this issue, the Dorgan amendment would raise the evidentiary standard needed to impose punitive damages, and would allow separate proceedings to be held on their imposition. By requiring a higher standard for the award of punitive damages than for the award of compensatory damages, the Dorgan amendment would clearly lower the number and size of punitive awards in general. At the same time, though, it would still allow very large awards in cases in which they were appropriate. Sometimes, twice compensatory damages, three times compensatory damages, or even ten times compensatory damages may not be enough to punish a company that has engaged in horrendous conduct. In summary, the Dorgan amendment would limit unjust punitive damage awards without imposing a cap. We support this compromise position, and therefore oppose the motion to table.